

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF ADOPTION AND
Rules I through III, and the)	AMENDMENT
amendment of ARM 37.80.101,)	
37.80.102, 37.80.103, 37.80.201,)	
37.80.202, 37.80.203, 37.80.206,)	
37.80.301, 37.80.305, 37.80.306,)	
37.80.316, and 37.80.502 pertaining)	
to child care assistance)	

TO: All Concerned Persons

1. On January 16, 2014, the Department of Public Health and Human Services published MAR Notice No. 37-663 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 64 of the 2014 Montana Administrative Register, Issue Number 1.

2. The department has adopted New Rule I (37.80.506), II (37.80.507), and III (37.80.317) as proposed.

3. The department has amended ARM 37.80.101, 37.80.103, 37.80.201, 37.80.203, 37.80.206, 37.80.301, 37.80.305, 37.80.316, and 37.80.502 as proposed.

4. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.80.102 DEFINITIONS As used in this chapter, the following definitions apply:

(1) and (2) remain as proposed.

(3) "Child care" means care provided at a licensed or registered child care facility or by a certified provider, for a child less than 13 years of age or an individual person less than 19 18 years of age with special needs or a person who is 18 years of age and who is a full-time student expected to complete an educational program by 19 years of age. The terms "child care" and "day care" have the same meaning and are used interchangeably in this subchapter.

(4) through (6) remain as proposed.

(7) "Child with special needs" means a child under 19 18 years of age, or a person who is 18 years of age and who is a full-time student expected to complete an educational program by 19 years of age, who requires additional assistance because of an emotional or physical disability, a cognitive delay, or both that is verified by medical records or other appropriate documentation.

(8) through (22) remain as proposed.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.202 FINANCIAL REQUIREMENTS FOR ELIGIBILITY; PAYMENT FOR CHILD CARE SERVICES; PARENT'S COPAYMENT (1) remains as proposed.

(2) Households that are not receiving temporary assistance for needy families (TANF) are presumed eligible to receive child care assistance for 30 calendar days while application information is verified.

(a) remains as proposed.

(b) An applicant who intentionally provides false information for the purpose of receiving child care assistance must repay the child care assistance and is may be ineligible to participate in the program.

(3) through (14) remain as proposed.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-212, 53-4-601, 53-4-611, MCA

37.80.306 LEGALLY CERTIFIED PROVIDERS: CERTIFICATION REQUIREMENTS AND PROCEDURES (1) through (4) remain as proposed.

(5) Legally certified providers must also meet the following requirements to be certified under this chapter:

(a) through (c) remain as proposed.

(d) care for no more than two children at a time, unless the children are from the same family household. If the children are from separate families households, then a legally certified provider may care for no more than two children;

(e) through (6) remain as proposed.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: A commenter agrees with the department's recent change to ARM 37.80.306 that reduced the time period a conviction for driving under the influence (DUI) precludes a person from qualifying as a Legally Certified Provider (LCP). The department now allows a person to qualify as a LCP if at least three years have passed since the last DUI conviction. The commenter suggested the department adopt the same time limit for other criminal convictions.

RESPONSE #1: The department appreciates this perspective. However, unlike child care providers licensed by the Quality Assurance Division, the department has limited review authority of LCPs after they are qualified to receive the child care

subsidy. The criminal background check is how the department reviews LCPs' qualifications to provide child care. Therefore, the department considers the look back period to age 18 for applicant criminal convictions a reasonable time period for the protection of children in the care of LCPs.

COMMENT #2: A commenter stated that the list in ARM 37.80.306 of events and convictions that preclude certification is too broad.

RESPONSE #2: The department's proposed amendments to this rule attempt to use language describing criminal convictions that is similar to the Montana Criminal Code, Title 45, MCA. The department has considered what prior criminal conduct may reasonably be an indication that an individual is unable or unwilling to provide safe child care. If an individual's or a household member's past conduct indicates the potential that he or she may be a risk to a child, the department will not allow the individual to participate in subsidized child care as an LCP.

COMMENT #3: A commenter stated that only felony, not misdemeanor convictions, should be grounds for denying certification.

RESPONSE #3: State statute classifies convictions as a felony or misdemeanor based on the maximum potential sentence. The department includes misdemeanor convictions because of the conduct involved. The department does not agree that conduct resulting in a misdemeanor conviction is not serious enough to preclude certification as a provider.

COMMENT #4: A commenter supports the simplification of ARM 37.80.101.

RESPONSE #4: The department appreciates the feedback.

COMMENT #5: A commenter stated they appreciate the clarification of the age of the child in ARM 37.80.201(11).

RESPONSE #5: The department appreciates the feedback.

COMMENT #6: A commenter asked if the language "is ineligible to participate in the program" found in ARM 37.80.202(2)(b) means that an applicant is permanently ineligible to participate or is ineligible during one application time period.

RESPONSE #6: If the department determines that an applicant purposefully gave false information to obtain child care scholarship funds, the applicant must repay any funds received and may be permanently ineligible to participate in the program.

COMMENT #7: A commenter asked two questions about ARM 37.80.301(5)(c): how will the child care resource and referral agency enforce this policy to make the provider supply sign-in/sign-out records; and, should there be a time frame for a provider to supply these to the child care resource and referral agency?

RESPONSE #7: The questions involve procedures around rule and policy implementation. The department will utilize these questions as part of its next round of the procedure development process.

COMMENT #8: Legislative Council commented that 52-2-703(1), MCA, defines a child with special needs as either a person under 18 years of age with special needs or a person who is 18 years of age and is a full-time student expected to complete an educational program by 19 years of age. The commenter stated that ARM 37.80.102(7) as proposed is broader than the statutory definitions of "child" because there is no mention of the educational component.

RESPONSE #8: The department agrees with the commenter and is amending ARM 37.80.102(3) and (7).

COMMENT #9: A commenter noted that New Rule II will allow the department to respond to serious program integrity issues but it is arbitrary. There are multiple penalties for the first violation (requires repayment or requires repayment and termination from the program) and the second violation (requires repayment and termination for the parent or requires repayment and termination is appropriate).

RESPONSE #9: The rule is drafted to allow the department not to impose financial penalties for the first violation. New Rule I outlines the definitions for an intentional program violation. New Rule II provides the department with three options depending on the severity of the violation outlined in New Rule I.

COMMENT #10: A commenter noted that the definition of a legally certified provider found in ARM 37.80.102(16) states that the provider may care for up to two children or all the children from the same household. As a household is not defined and as a household could include more than one family (sibling group), this appears to conflict with ARM 37.80.306(5)(d).

RESPONSE #10: The department agrees with the commenter and will replace the term "family" in ARM 37.80.306(5)(d) with "household." This is not a change from the intent of ARM 37.80.102(16) as published in the notice of proposed amendment. The department is amending the language to more clearly state the number of children a legally certified provider may care for and stay within the certificate requirements for this provider type.

COMMENT #11: A commenter indicated that ARM 37.80.202(2)(b) states that an applicant who intentionally provides false information for the purpose of receiving child care assistance must repay the child care assistance and is "ineligible" to participate in the program. Assuming that this is the first intentional program violation and that proposed New Rule II is adopted, would the department have the discretion to only require repayment since there are two possible penalties under the proposed rule?

RESPONSE #11: The department agrees the wording in proposed New Rule II and the language in ARM 37.80.202 are inconsistent. The department will amend the language in ARM 37.80.202(2)(b).

6. The department intends to apply these rule adoptions and amendments retroactively to March 1, 2014. A retroactive application of the proposed rule adoptions and amendments does not result in a negative impact to any affected party.

/s/ Geralyn Driscoll
Geraldyn Driscoll
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State March 17, 2014